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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/655,367	09/05/2000	Stephen John Hinde	1509-127	7840

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EXAMINER

SIMITOSKI, MICHAEL J

ART UNIT	PAPER NUMBER
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2134

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/655,367	Applicant(s) HINDE ET AL.	
	Examiner Michael J Simitoski	Art Unit 2134	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 September 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The response of 8/6/04 was received and considered.
2. Claims 1-12 are pending.

Response to Arguments

3. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.
4. Applicant's response (p. 11, ¶1) argues that claim 1 differs from the art in that the claim is concerned with the opening and closing of a socket at the client. The claim language of claim 1 requires "closing the existing connection" and "opening a new communications socket at the client". The claim does not specify that the connection is closed "at the client". Further, the opening and closing of a socket on the client computer has to occur at the client as it is a feature of the operation system.
5. Applicant's response (p. 11, ¶2) argues that the "close" in Aline is not equivalent to the GET operation. The claim states "opening a new communications socket ... by performing another GET operation of equivalent". The Aline reference discloses this feature on p. 2, ¶1. Further, the HTTP/1.1 specification states that multiple requests (GET) can be issued without waiting for each individual response (pipelining, §8.1), the subsequent GET operations not causing the socket to close by default.
6. Applicant's response (p. 11, ¶3) argues that Chang does not disclose sending a second GET message to close one socket and open another. Claim 1, as amended, does not claim that the second GET message closes one socket and opens another. It is noted that the features upon

which applicant relies (i.e., an HTTP GET message closing one socket and opening another) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 8-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 8-9 appear to be directed towards a computer program per se, having no functional relationship with the claimed apparatus.

9. Claim 7 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

To expedite a complete examination of the instant application, the claims rejected under 35 U.S.C. 101 (nonstatutory) above are further rejected as set forth below in anticipation of the applicant amending these claims to place them within the four statutory classes of invention.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 2134

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1-3, 5, 8-9 & 11-12, the phrase "or equivalent thereof" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or equivalent thereof"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d). Claims 4, 6-7 & 10 are rejected based on their dependence on claims 1-3, 5, 8-9 & 11-12.

Regarding claim 2, it is unclear which time interval the limitation "after which software on the client side" limits (the predetermined time interval or specific time interval).

Regarding claim 2, the claim states "termination of a client communications socket established by said GET operation", however, the method of claim 1 claims two GET operations, one in step (a) and one in step (b); this renders claim 2 unclear as to which GET operation is being limited.

Regarding claim 7, the claim provides for the use of "said software" (claim 2), but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Regarding claim 8, it is unclear what "the latter" is referring to (line 8 of the claim).

Regarding claim 8, "in respect of said service" is vague and indefinite (lines 8, 13 & 14 of the claim).

Regarding claim 8, it is not clear what part of the claim the limitation “thereby to close the existing said communications socket ...” is associated with. *For the purposes of this Office Action, the limitation is understood to be associated with “a second control arrangement”.*

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1, 8 & 11, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over “Burrowing Through Firewalls” by Aline et al. (Aline) in view of U.S. Patent 6,134,584 to Chang et al. (Chang). Aline discloses effecting an HTTP GET operation or equivalent thereof/GET (p. 2, ¶1) from the client to establish a communications socket for communicating data between the service/server and the client (p. 2, ¶1), closing the existing communications socket (p. 2, ¶1) and opening a new communications socket at the client for communicating data between the service and the client by performing another GET operation and repeating step (b) (the process is repeated) (p. 2, ¶1) while access between the service and the client is required to continue (anything further needs to be sent) (p. 2, ¶1), without repeating step (a). Aline lacks performing the close after a predetermined time interval. However, Chang teaches a system where users can schedule downloads and place an upper limit on download times (col. 4, lines 23-27), where the download is interrupted when a predetermined time limit is exceeded (col. 6, lines 45-50), with the benefit that the computer doesn’t have to be on all the

Art Unit: 2134

time and because it is advantageous to specify upper limits on downloads (col. 3, lines 13-20 & col. 4, lines 23-28). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to wait a predetermined time interval (upper limit on download time) and then disconnect. One of ordinary skill in the art would have been motivated to perform such a modification to allow users to schedule downloads without requiring the computer be turned on and to gain the benefit of specifying upper limits on downloads, as taught by Chang (col. 4, lines 23-28).

14. Claims 3 & 12, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Aline in view of Chang, as applied to claim 1 above, in further view of “Hypertext Transfer Protocol – HTTP/1.1” by Fielding et al. (Fielding). As modified above, Aline lacks using the HTTP POST to transfer information from the client to the service. However, Fielding teaches that the HTTP POST method is used to request acceptance of an entity enclosed in a request, such as a block of data (p. 2, ¶1-3). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the HTTP POST method to transfer information from the client to the service. One of ordinary skill in the art would have been motivated to perform such a modification because the HTTP POST method is used to request acceptance of an entity enclosed in a request, such as a block of data, as taught by Fielding (p. 2, ¶1-3).

15. Claims 4-5 & 9, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Aline in view of Chang, as applied to claim 1 above, in further view of U.S.

Art Unit: 2134

Patent 6,169,992 to Beall et al. (Beall). Aline discloses a using the GET or POST operations to communicate data between a server and a client, but lacks a globally-unique identifier created by the client and communicated to the service. However, Beall teaches that including a client ID in an http-tunneled packet makes it easier to administer multiple connections (col. 27, lines 54-61). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a globally-unique identifier. One of ordinary skill in the art would have been motivated to perform such a modification to make it easier to administer multiple connections, as taught by Beall (col. 27, lines 54-61).

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 2134

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Simitoski whose telephone number is (571) 272-3841. The examiner can normally be reached on Monday - Thursday, 6:45 a.m. - 4:15 p.m.. The examiner can also be reached on alternate Fridays from 6:45 a.m. - 3:15 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Morse can be reached at (571) 272-3838.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, DC 20231

Or faxed to:

(703)746-7239 (for formal communications intended for entry)

Or:

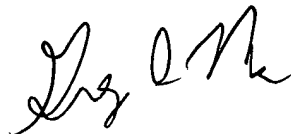
(571)273-3841 (Examiner's fax, for informal or draft communications, please label "PROPOSED" or "DRAFT")

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MJS
January 3, 2005



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